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February 16, 2023

**VIA ECF**

The Honorable Sarah L. Cave  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street, Room 18A  
New York, NY 10007-1312

**Re: *Flynn et al v. Cable News Network, Inc.*, No. 1:21-cv-02587-GHW-SLC**

Dear Judge Cave:

We represent Defendant Cable News Network (“CNN”) and submit this letter-motion in response to Plaintiffs’ letter-motion dated February 14, 2023 (Dkt. 109) and in further support of Defendant’s letter-motion dated February 9, 2023 (Dkt. 105).

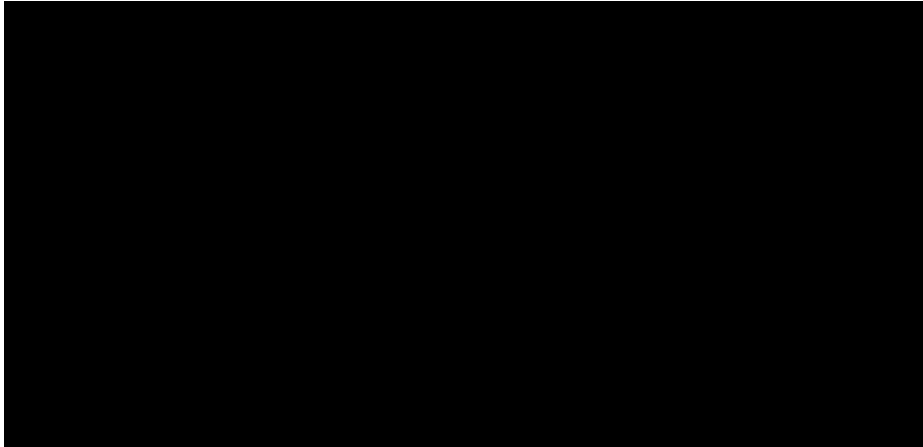
Despite Plaintiffs’ counsel’s rhetoric, there can be no reasonable dispute that Plaintiffs simply have not met their discovery obligations. Specifically, on more than one occasion, CNN has received from third parties documents responsive to its requests that should have been produced by the Plaintiffs. Each time CNN notified Plaintiffs’ counsel about those materials and asked him to search again for responsive documents, and each time, Plaintiffs’ counsel found the identified documents—and only the identified documents. In addition, Plaintiffs’ counsel admits in his letter that he did not personally perform the searches this Court ordered him to do and instead, relied on his clients to do so. CNN has good cause, therefore, to question the completeness of Plaintiffs’ document production. In addition, because it appears the Plaintiffs communicated on messaging platforms with auto-delete functions and/or end-to-end encryption, CNN is entitled to learn what if anything was said in those messaging platforms and whether Plaintiffs created a spoliation issue by not turning off the auto-delete function. Therefore, for the reasons stated in Defendant’s opening letter-motion and for the reasons stated herein, Defendant’s counsel requests that Plaintiffs’ counsel either personally search his clients cell phones for all responsive communications, or submit all cell phones to a third-party for a forensic collection.

**Signal:** Plaintiffs’ counsel asserts that “there are no conversations between Jack Flynn and Lori Flynn using Signal” but this claim is belied by an Instagram message produced by Jack Flynn dated March 4, 2021 (20 days before this action was filed) directing Lori Flynn to call him on Signal to discuss the litigation. For reference, that message directing Lori Flynn to call Jack Flynn on Signal to discuss the litigation is produced below:

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The Court should, therefore, compel Plaintiffs' counsel to search his clients' phones and provide clear answers about how they used Signal, whether any messages remain, and whether they changed the auto-delete feature on their phone when they decided to bring this lawsuit.

**WhatsApp and Telegram:** Plaintiffs' counsel makes the conclusory assertion that his clients' use of WhatsApp and Telegram is unrelated to this litigation, but because he has not personally searched either messaging platform, it is unclear upon what basis he makes this representation to the Court. He should, therefore, be compelled to search WhatsApp and Telegram.

**Deleted Messages:** Contrary to Plaintiffs' counsel's assertion that "No text messages are missing. CNN has them all," Plaintiffs' counsel has admitted in multiple emails that his clients have either deleted messages or no longer have messages that have been produced by various third parties. For instance, on January 4, 2023 and January 14, 2023, Plaintiff's counsel stated:

- "Jack Flynn sent the text messages to Sidney Powell on February 14, 2021, seeking personal advice on who to engage as counsel. Prior to the Flynns' execution of my engagement letter on February 16, 2021, Jack Flynn deleted the text messages."
- "Other than the 02/14/2021 texts (bates-stamped FLYNN132-134), Jack Flynn did not delete any other texts."
- "General Flynn and Lori Flynn do not have any text messages with Jennifer Freitas. Further, they were not required to retain the text messages produced by Shirt Show (i.e., Shirt Show 1-31, 41-47)."
- "Tracy Diaz 136 – In this October 14, 2020 text message exchange, Joe Flynn and Tracy Diaz mock QAnon. Joe Flynn did not retain the text ..."

In sum, on numerous occasions Plaintiffs' counsel has admitted that his clients deleted various text messages that have been produced by third parties.

CNN, therefore, respectfully requests that this Court order Plaintiffs' counsel to either personally search his clients' cell phones for all responsive communications on these messaging platforms, or submit all cell phones to a third-party for a forensic collection.

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Respectfully Submitted,

Davis Wright Tremaine LLP



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